

## Article 13.

### Representative's Powers, Duties and Liabilities.

#### **§ 28A-13-1. Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon the personal representative's appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. However, a person named executor in a will may, prior to appointment, carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative. (1973, c. 1329, s. 3; 2007-502, s. 17; 2011-344, s. 4.)

#### **§ 28A-13-2. General duties; relation to persons interested in estate.**

A personal representative is a fiduciary who, in addition to the specific duties stated in this Chapter, is under a general duty to settle the estate of the personal representative's decedent as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. A personal representative shall use the authority and powers conferred upon the personal representative by this Chapter, by the terms of the will under which the personal representative is acting, by any order of court in proceedings to which the personal representative is party, and by the rules generally applicable to fiduciaries, for the best interests of all persons interested in the estate, and with due regard for their respective rights. (1973, c. 1329, s. 3; 2011-344, s. 4.)

#### **§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

- (1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. The personal representative has the power to take possession, custody or control of the real property of the decedent if the personal representative determines such possession, custody or control is in the best interest of the administration of the estate, including the power to eject occupants of real property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal

representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.

- (2) To retain assets owned by the decedent pending distribution or liquidation even though such assets may include items which are otherwise improper for investment of trust funds.
- (3) To receive assets from other fiduciaries or other sources.
- (3a) To obtain the decedent's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.
- (4) To complete performance of contracts entered into by the decedent that continue as obligations of the decedent's estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if the decedent had refused to complete such contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are controlling.
- (5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative pursuant to G.S. 53-163.1.
- (6) To make, as a fiduciary, any form of investment allowed by law to the State Treasurer under G.S. 147-69.1, with funds of the estate, when such are not needed to meet debts and expenses immediately payable and are not immediately distributable, including money received from the sale of other assets; or to enter into other short-term loan arrangements that may be appropriate for use by trustees or beneficiaries generally. Provided, that in addition to the types of investments hereby authorized, deposits in interest-bearing accounts of any credit union authorized to do business in this State, when such deposits are insured in the same manner as required by G.S. 147-69.1 for deposits in a savings and loan association, are hereby authorized.
- (7) To abandon or relinquish all rights in any property when, in the opinion of the personal representative acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.
- (8) To vote shares of stock or other securities in person or by general or limited proxy, and to execute waivers, consents or objections with respect to such stock or securities.
- (9) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.
- (10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

- a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and
- b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions.

- (11) To insure, at the expense of the estate, the assets of the estate in the personal representative's possession, custody or control against damage or loss.
- (12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11 is controlling.
- (13) To renew obligations of the decedent for the payment of money.
- (14) To advance the personal representative's own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, the personal representative shall have a lien on the assets of the estate as against a devisee or heir.
- (15) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.
- (16) To pay taxes, assessments, the personal representative's own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in the personal representative's possession, custody or control.
- (17) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (18) To allocate items of income or expense to either estate income or principal, as permitted or provided by law.
- (19) To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist the personal representative in the performance of the personal representative's administrative duties.
- (20) To continue any business or venture in which the decedent was engaged at the date of the decedent's death, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the decedent's interest in such business. With respect to the use of the decedent's interest in a

continuing partnership, the provisions of G.S. 59-71 and 59-72 qualify this power; and with respect to farming operations engaged in by the decedent at the time of the decedent's death, the provisions of G.S. 28A-13-4 qualify this power.

- (21) To incorporate or participate in the incorporation of any business or venture in which the decedent was engaged at the time of the decedent's death.
- (22) To provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
- (23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or not. Unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent adults and have consented in writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action or a judge of the district or superior court in cases where no action has previously been filed. If the claim is brought under Article 31 of Chapter 143 of the General Statutes, the settlement is subject to the approval of the Industrial Commission in accordance with that Article. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff.
- (24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the decedent to any of the decedent's property; and to recover damages for any injury done subsequent to the death of the decedent to such property.
- (25) To purchase at any public or private sale of any real or personal property belonging to the decedent's estate or securing an obligation of the estate as a fiduciary for the benefit of the estate when, in the personal representative's opinion, it is necessary to prevent a loss to the estate.
- (26) To sell or lease personal property of the estate in the manner prescribed by the provisions of Article 16 of this Chapter.
- (27) To sell or lease real property of the estate in the manner prescribed by the provisions of Article 17 of this Chapter.
- (28) To enter into agreements with taxing authorities to secure the benefit of the federal marital deduction pursuant to G.S. 28A-22-6.
- (29) To pay or satisfy the debts and claims against the decedent's estate in the order and manner prescribed by Article 19 of this Chapter.
- (30) To distribute any sum recovered for the wrongful death of the decedent according to the provisions of G.S. 28A-18-2; and to distribute all other assets available for distribution according to the provisions of this Chapter or as otherwise lawfully authorized.
- (31) To exercise such additional lawful powers as are conferred upon the personal representative by the will.

- (32) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the personal representative.
- (33) Repealed by Session Laws 2009-48, s. 10, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Repealed by Session Laws 2012-18, s. 3.7, effective June 11, 2012.

(c) Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) of this section to enforce those rights, prior to the personal representative exercising possession, custody or control over real property of the estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

- (1) A description of the real property which is the subject of the petition;
- (2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;
- (3) A statement by the personal representative that the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The personal representative has the power to institute a proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this section. The clerk of superior court may enter orders necessary to enforce the rights set forth in this section. If the person occupying the real property is a tenant or lessee of the property, the personal representative may seek ejectment of the tenant or lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes. (1868-9, c. 113, ss. 73, 77; Code, ss. 1501, 1505; Rev., ss. 85, 159; C.S., ss. 170, 171; 1925, c. 86; 1933, cc. 161, 196, 498; 1973, c. 1329, s. 3; 1975, c. 19, s. 9; c. 371, s. 4; 1977, c. 556; 1979, c. 467, s. 21; c. 717, s. 3; 1985, c. 689, s. 8; 1991, c. 460, s. 3; 1995, c. 401, s. 1; 1997-181, s. 22; 2001-413, s. 2; 2002-159, s. 8; 2007-106, s. 1; 2009-48, s. 10; 2011-344, s. 4; 2012-18, s. 3.7; 2016-53, s. 3.)

#### **§ 28A-13-4. Continuance of farming operations of deceased persons.**

When any person dies while engaged in farming operations, the decedent's personal representative is authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from such farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with such farming operations after the date of death shall be preferred over the claims of any heir, devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of a personal representative under the terms of a will. (1935, c. 163; 1973, c. 1329, s. 3; 2011-284, s. 15; 2011-344, s. 4.)

**§ 28A-13-5. Personal representatives hold in joint tenancy.**

Any estate or interest in property which becomes vested in two or more personal representatives shall be held by them in joint tenancy with the incident of survivorship. (1868-9, c. 113, s. 74; Code, s. 1502; Rev., s. 166; C.S., s. 172; 1973, c. 1329, s. 3.)

**§ 28A-13-6. Exercise of powers of joint personal representatives by one or more than one.**

- (a) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.
- (b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.
- (c) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.
- (c1) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which the personal representatives qualified, provide that any designated one or more of the personal representatives may exercise one or more of the following powers:
  - (1) Establish and maintain bank accounts for the estate and issue checks for the estate.
  - (2) Maintain inventories, accountings, and income and expense records of the estate.
  - (3) Enter any safety deposit box rented by the estate.
  - (4) Employ persons as advisors or assistants in the performance of administrative duties, including agents, attorneys, accountants, brokers, appraisers, and custodians.
  - (5) List estate property for taxes and prepare and file tax returns for the estate.
  - (6) Collect and give receipts for claims and debts of the estate.
  - (7) Pay debts, claims, costs of administration, and taxes of the estate.
  - (8) Compromise, adjust, or otherwise settle any claim by or against the estate and release, in whole or in part, a claim belonging to the estate.
  - (9) Have custody of the estate property.
  - (10) Perform any function relating to investment of estate assets.
- (d) Subject to subsection (b) of this section, if two or more personal representatives own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:
  - (1) If only one votes, in person or by proxy, that personal representative's act binds all;
  - (2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

- (3) If more than [than] one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately.

(e) Subject to subsections (b), (c1), and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two. No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which the personal representative joins at the direction of the majority of the personal representatives, if that personal representative expressed his or her dissent in writing to any other personal representative at or before the time of such joinder.

(f) No personal representative shall be relieved of liability on his or her bond or otherwise by entering into any agreement under this section. (1959, c. 1160; 1973, c. 1329, s. 3; 1977, c. 446, s. 1; 1991, c. 460, s. 1; 2005-192, s. 5; 2011-326, s. 5; 2011-344, s. 4.)

#### **§ 28A-13-7. Powers and duties of successor personal representative.**

A successor personal representative is one appointed to succeed a personal representative whose appointment has terminated by death, resignation or revocation. Unless a contrary intent clearly appears from the will, a successor personal representative has all the powers and duties, discretionary or otherwise, of the original personal representative. (1973, c. 1329, s. 3.)

#### **§ 28A-13-8. Powers and duties of administrator with will annexed.**

When an administrator with the will annexed has been appointed, whether or not the administrator is succeeding a previously appointed personal representative, that administrator has the same powers and duties, discretionary or otherwise, as if the administrator had been named executor in the will, unless a contrary intent clearly appears from the will. (C.C.P., s. 468; 1870-1, c. 93; Code, s. 1388; Rev., s. 319; C.S., s. 33; 1935, c. 386; 1949, c. 971; 1967, c. 41, s. 1; 1973, c. 1329, s. 3; 2011-344, s. 4.)

#### **§ 28A-13-9. Powers of surviving personal representative.**

When one or more of those nominated as coexecutors in a will is not appointed, or when the appointment of one or more joint personal representatives is terminated, every power granted to such joint personal representatives may be exercised by the surviving representative or representatives; provided that nothing to the contrary appears in the will of a testate decedent. (C.C.P., s. 451; Code, s. 2164; Rev., s. 13; C.S., s. 16; 1931, c. 183; 1953, c. 78, s. 1; 1973, c. 1329, s. 3.)

#### **§ 28A-13-10. Liability of personal representative.**

(a) Property of Estate. – A personal representative shall be liable for and chargeable in the personal representative's accounts with all of the estate of the decedent which comes into the personal representative's possession at any time, including all the income therefrom; but the personal representative shall not be liable for any debts due to the decedent or other assets of the estate which remain uncollected without the personal representative's fault. Except for commissions allowable by law, the personal representative shall not be entitled to any profits caused by an increase in values, nor be chargeable with loss by a decrease in value or destruction without the personal representative's fault, of any part of the estate.

(b) Property Not a Part of Estate. – A personal representative shall be chargeable in the personal representative's accounts with property not a part of the estate which comes into the personal representative's possession at any time and shall be liable to the persons entitled thereto if:

- (1) The property was received under a duty imposed on the personal representative by law in the capacity of personal representative; or
- (2) The personal representative has commingled such property with the assets of the estate.

(c) Breach of Duty. – A personal representative shall be liable and chargeable in the personal representative's accounts for any loss to the estate arising from the personal representative's embezzlement or commingling of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate from wrongful acts or omissions of the personal representative's joint personal representatives which the personal representative could have prevented by the exercise of ordinary care; and for any loss to the estate arising from the personal representative's failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent person would act with the ordinarily reasonable and prudent person's own property under like circumstances. If the exercise of power concerning the estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. (1973, c. 1329, s. 3; 1975, c. 300, s. 4; 2011-344, s. 4.)